

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MARK UHART**

Claimant

VS.

**SPRINT CORPORATION**

Respondent

AND

**AMERICAN CASUALTY CO. OF  
READING, PA**

Insurance Carrier

Docket No. 1,020,393

**ORDER**

Respondent and its insurance carrier (respondent) request review of the September 15, 2005 preliminary hearing Order entered by Administrative Law Judge (ALJ) Kenneth J. Hursh.

**ISSUES**

Respondent appealed the ALJ's most recent preliminary hearing Order granting claimant continued medical treatment for claimant's left knee injury consistent with the ALJ's earlier findings in a preliminary hearing Order dated May 27, 2005.

Respondent contends the evidence does not support the ALJ's conclusion that claimant provided timely notice as required by K.S.A. 44-520, or that claimant's knee injury arose out of and in the course of his employment with respondent. Rather, respondent argues that claimant gave notice of a work-related injury in August 2003, over 75 days after the alleged date of accident. And that both the contemporaneous medical records and the testimony of respondent's witnesses are more credible, suggesting claimant's injury was not caused by his work activities and/or predated his alleged date of accident, March 12, 2003.

Claimant urges the Board to affirm the ALJ's preliminary hearing Order asserting that the ALJ has, on two separate occasions, accepted claimant's version of his accident and his subsequent notice to his supervisor. Thus, claimant is entitled to the benefits awarded in the ALJ's preliminary hearing Order.

The only issues to be decided are whether claimant provided timely notice as required by K.S.A. 44-520 and whether claimant's alleged injury arose out of and in the course of his employment with respondent.<sup>1</sup>

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The ALJ went into great detail setting forth the evidence offered by the parties and the Board finds it to be accurate and therefore adopts that statement as its own.

This is the second preliminary hearing held by the ALJ on the same issues. While claimant contends he told his supervisor, J. Mark Cosby, about his injury on the date of the alleged accident, March 12, 2003, respondent adamantly denies this fact. Mr. Cosby did not testify at the first preliminary hearing. Thus, claimant's version of notice and of the facts and circumstances surrounding the accident itself remained uncontroverted. Following the preliminary hearing, an Order was entered and claimant was provided with medical treatment for his left knee injury with Dr. Stechschulte.

At the second preliminary hearing, held on September 14, 2005, the same issues of notice and causation were placed at issue. Mr. Cosby's deposition testimony was offered as well as that of one of claimant's former co-workers, Kathleen O'Connor. Mr. Cosby testified that he only recalled claimant reporting a knee injury in August 2003 and only then, in connection with work at a copy machine and not while in his "cube". This is inconsistent with claimant's contention that he told Mr. Cosby on the date of his accident. Ms. O'Connor testified that in the early part of 2003 claimant indeed mentioned to her that he twisted his knee while carrying boxes.

The ALJ noted that "Cosby seemed less certain in his testimony than the claimant, so the claimant's testimony is considered more persuasive."<sup>2</sup> He further noted that Ms.

---

<sup>1</sup> Although the causal connection of claimant's injury and his work-related activities was at issue during both preliminary hearings, the only issue listed on the Application for Review is whether proper notice was given as required by K.S.A. 44-520. Nonetheless, the parties argue the causal connection within their briefs so the Board will address that aspect of the claim.

<sup>2</sup> ALJ Order (Sept. 15, 2005) at 2.

O'Connor's testimony corroborates the claimant's version of how he was injured and that her recollection of the time period is consistent with a March 2003 accident.

The ALJ expressly concluded that claimant's testimony was credible and indicated that the 1995 VA medical records did not, in his mind, establish a credible alternate cause for the knee problem the claimant expressed in 2003.<sup>3</sup> Thus, claimant was found to be entitled to ongoing medical care for his left knee complaints.

The Board has considered respondent's arguments and finds the ALJ's preliminary hearing Order should be affirmed in all respects.

K.S.A. 44-520 provides:

**Notice of injury.** Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice.

Claimant quite specifically testified that he gave notice to Mr. Cosby. While Mr. Cosby denies this, his denials are more in the nature of a lack of recollection and there is some suggestion in the testimony of Ms. O'Connor that Mr. Cosby tends to miss some information that comes his way when he is on the phone, as in this situation.

Obviously the question of notice turns upon the credibility of the claimant and Mr. Cosby. The Board finds that where there is conflicting testimony, as in this case, credibility of the witnesses is important. Here, the ALJ had the opportunity to personally observe the claimant. In granting claimant's request for medical treatment, the ALJ noted that he believed claimant's testimony over that offered by Mr. Cosby. The Board concludes that some deference may be given to the ALJ's findings and conclusions because he was able to judge the claimant's credibility by personally observing him testify. Under these facts,

---

<sup>3</sup> *Id.* at 2.

the Board finds the ALJ's conclusions with respect to timely notice are well reasoned and should be affirmed.

Similarly, the Board finds the ALJ's conclusions with respect to causation should be affirmed as well. Respondent suggests claimant has had previous left knee problems which would account for his present complaints and produced a medical record from the VA dating back to 1995. The ALJ was unpersuaded by this medical record and absent further documentation, the Board finds no credible reason to disturb the ALJ's conclusions on this issue. While it is apparently true that claimant went to the VA approximately 10 years ago voicing complaints about his left knee, there is no evidence that he had any further follow-up visits, nor had any further complaints after that point in time. The Board affirms the ALJ's conclusion that claimant sustained an accidental injury arising out of and in the course of his employment with respondent on March 12, 2003.

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Kenneth J. Hursh dated September 15, 2005, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of October 2005.

\_\_\_\_\_  
BOARD MEMBER

c: Michael J. Haight, Attorney for Claimant  
Daniel N. Allmayer, Attorney for Respondent and its Insurance Carrier  
Kenneth J. Hursh, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director